

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)
)
COUNTY OF MONROE, NEW YORK) File No. 0001897038
)
To Operate a Public Safety Talkback Paging)
System on 900 MHz Frequencies in Rochester,)
New York)

ORDER

Adopted: August 29, 2005

Released: August 31, 2005

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us an application¹ and waiver request² filed by the County of Monroe, New York (“Monroe” or “the County”) for authority to operate a public safety two-way paging system on a countywide basis on Business Category frequencies. Specifically, Monroe seeks a waiver of the Commission’s Rules, pursuant to Section 337(c) of the Communications Act, as amended (the Act)³ or, alternatively, Section 1.925 of the Commission’s Rules,⁴ to permit it to use frequencies 939.6500 and 900.6500 MHz.⁵ Monroe currently is authorized to operate the system pursuant to special temporary authority (STA) under Call Sign WQBH643, pending the resolution of its request for a permanent waiver. For the reasons stated below, we grant Monroe’s waiver request.

II. BACKGROUND

2. Monroe County, New York, which includes the City of Rochester, has a population of approximately 715,000 and covers an area of approximately 663 square miles.⁶ In 2002, the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau (Bureau) granted Monroe a waiver to permit it to operate a public safety one-way paging system on frequency 931.3125 MHz (a Part 22 paging frequency), in order to supplement its thirty-year-old UHF one-way paging system, which had become antiquated and inadequate.⁷ In 2004, the Bureau’s Public Safety and Critical

¹ See FCC File No. 0001897038 (filed Oct. 12, 2004).

² See FCC File No. 0001867308, Request for Waiver of Monroe County, New York (filed Sept. 10, 2004) (Request).

³ 47 U.S.C. § 337(c).

⁴ 47 C.F.R. § 1.925.

⁵ Request at 1.

⁶ *Id.*

⁷ See Monroe County, New York, *Memorandum Opinion and Order*, 17 FCC Rcd 21535 (WTB PSPWD 2002) (MO&O). The UHF system operates under Call Signs WPIK755 and WPGQ974. The 900 MHz system operates under Call Sign WPWY916.

Infrastructure Division (Division)⁸ denied Monroe's waiver request to utilize frequency 901.375 MHz as a talkback channel for two-way paging, because the frequency was assigned to another licensee.⁹ Monroe now seeks a waiver in order to permit it to utilize frequencies 939.6500 and 900.6500 MHz for a public safety system of two-way pagers. The requested frequencies are available to eligible applicants in the Business Radio Category, and are not designated for Public Safety use.¹⁰ On September 10, 2004, Monroe filed the current waiver request in conjunction with its STA application,¹¹ which the Division granted on October 7, 2004,¹² with an expiration date of April 7, 2005.¹³ Monroe filed the instant application for permanent authority on October 12, 2004. Monroe's waiver request for permanent authority was placed on public notice on November 1, 2004.¹⁴ We received no comments or reply comments.

III. DISCUSSION

3. *Section 337.* Section 337(c) of the Act provides that the Commission must waive any rules necessary to authorize entities providing public safety services to operate on "unassigned frequencies," if the Commission makes five specific findings:

- public safety spectrum is not immediately available;
- the proposed use will not cause harmful interference to protected spectrum users;
- public safety use of the unassigned frequencies is consistent with public safety spectrum allocations in the geographic area;
- the unassigned frequencies have been allocated for non-public safety use for more than two years; and
- grant of the application is consistent with the public interest.¹⁵

⁸ The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. *See* Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

⁹ *See* Monroe County, New York, *Order*, 19 FCC Rcd 11828 (WTB PSCID 2004).

¹⁰ *See* 47 C.F.R. 90.617(c) Table 3B.

¹¹ FCC File No. 0001867308.

¹² *See* Letter dated Oct. 6, 2004 from Tracy Simmons, Associate Chief, Licensing Operations, Public Safety and Critical Infrastructure Division, to Richard J. Verdouw, County of Monroe.

¹³ Monroe subsequently renewed the STA until September 29, 2005. *See* FCC File No. 0002103274.

¹⁴ Wireless Telecommunications Bureau Seeks Comment on Monroe County, New York Request for Waiver to Operate Public Safety Paging System on 900 MHz Industrial/Land Transportation Frequencies, *Public Notice*, 19 FCC Rcd 21881 (WTB PSCID 2004).

¹⁵ *See* 47 U.S.C. § 337(c).

4. When considering requests under Section 337, we first must determine whether the applicant is “an entity seeking to provide public safety services.”¹⁶ Based on the record before us and the 2002 *MO&O* granting a waiver pursuant to Section 337, we conclude that Monroe is an entity providing public safety services.¹⁷ We therefore move to whether Monroe meets the other statutory requirements supporting a waiver under Section 337(c) of the Act.

5. *No other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use.* The 2002 *MO&O* concluded that no public safety spectrum was immediately available for Monroe County’s paging operations.¹⁸ Monroe submits that there are no 900 MHz channels allocated to public safety, and the only two-way paging equipment manufactured operates in the 900 MHz bands.¹⁹ Based on our analysis of the information Monroe has submitted, we again conclude that Monroe has shown that no other public safety spectrum is immediately available in the area to be covered by the County.

6. *The requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations.* Monroe searched the Commission’s licensing database, determined that neither the requested channel pair nor the adjacent channels are assigned within 200 kilometers (124.3 miles) of Monroe County’s proposed site.²⁰ In light of its proximity to Canada, Monroe also provided a study²¹ indicating that its proposed system’s power flux density at the U.S./Canada border will not exceed the value set forth in Section 90.619(d)(6).²² Based on the record presented, we conclude that Monroe County has made a sufficient showing that the use of the subject frequency is technically feasible and would not interfere with existing licensees.

7. *The use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made.* Monroe observes that the purpose of this criterion is to ensure that interoperability of public safety services is not impaired.²³ Because its paging system serves every fire department, every EMS department and most police departments within Monroe County, the County believes its new system would be a critical tool to enhance interoperability.²⁴ Section 337(c)(1)(C) requires that the spectrum

¹⁶ 47 U.S.C. § 337(c). Section 337(f) defines the term “public safety services” as “services—
(A) the sole or principal purpose of which is to protect the safety of life, health, or property;
(B) that are provided—
(i) by State or local government entities; or
(ii) by non-governmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and
(C) that are not made commercially available to the public by the provider.

47 U.S.C. § 337(f).

¹⁷ Request at 4; *see also MO&O*, 17 FCC Rcd at 21538 ¶ 7.

¹⁸ *See MO&O*, 17 FCC Rcd at 21539-40 ¶ 10.

¹⁹ Request at 4.

²⁰ *Id.* at 5; FCC File No. 0001897038, Exhibits A and B.

²¹ FCC File No. 0001897038, Exhibit C.

²² *See* 47 C.F.R. § 90.619(d)(6) Tables 29, 30.

²³ Request at 5 (citing H.R. Rep. No. 111, 103rd Cong., 1st Sess. at 580 (1997)).

²⁴ *Id.*

sought is or will be used for other public safety operations in the geographic area.²⁵ Consistent with the 2002 *MO&O*,²⁶ we conclude that the proposed use of the requested frequency will be consistent with the Commission's public safety spectrum designation in the subject geographic area and will further interoperability.²⁷

8. *The unassigned frequencies were allocated for their present use not less than two years prior to the date on which the application will be granted.* The subject frequencies were designated for Business Category use in 1986.²⁸ As the frequencies 939.6500 and 900.6500 MHz were allocated for their present use more than two years ago, Monroe has met this criterion.

9. *Granting the application is consistent with the public interest.* In analyzing the County's waiver request, we find that Monroe has made a persuasive showing that grant of its waiver request is in the public interest. As described by Monroe, it has a critical need to put into service a system of two-way pagers to help carry out its role in homeland security.²⁹ The system will provide interoperability to police, fire, EMS, and security agencies charged with maintaining the safety and security of the County's citizens.³⁰ Granting Monroe's request will allow it to use otherwise vacant spectrum to preserve and promote critical communications that protect the safety of life, health, and property.³¹ Therefore, we conclude that Monroe has made the requisite showing that granting its waiver request is in the public interest.

IV. CONCLUSION

10. We conclude that Monroe's waiver request satisfies the criteria under Section 337(c) of the Act to obtain a grant of its application for frequencies 939.6500 and 900.6500 MHz.³² We therefore grant Monroe a waiver of Section 90.617 of the Commission's Rules to permit public safety use of these Business Category frequencies.³³ Pursuant to Section 90.619(d)(6) of the Commission's Rules, Monroe's authorization will be secondary to Canadian operations and conditioned to require that Monroe take

²⁵ Cf. Borough of Sayreville, New Jersey, *Order*, 14 FCC Rcd 19393, 19396 ¶ 8 (WTB 1999).

²⁶ See *MO&O*, 17 FCC Rcd at 21540-41 ¶ 12.

²⁷ See City of Pomona, California, *Order*, 15 FCC Rcd 15597, 15601 ¶ 10 (WTB 2000).

²⁸ See Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, *Report and Order*, GEN Docket No. 84-1231, 2 FCC Rcd 1825 (1986).

²⁹ Request at 1.

³⁰ *Id.* at 1-2.

³¹ *Id.* at 6.

³² In view of the conclusion that a waiver is warranted under Section 337(c) of the Act, we need not reach the question of whether Monroe's waiver request should be granted under Section 1.925(b)(3) of the Commission's Rules.

³³ We also waive the current freeze on 900 MHz applications in this instance, in order to grant Monroe's request. See Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, *Public Notice*, 19 FCC Rcd 18277 (WTB PSCID 2004); see also Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 05-62, 20 FCC Rcd 3814 (2005). We note that Monroe's waiver request was pending when the freeze was implemented, but its application for permanent authority was filed thereafter.

immediate action to eliminate any harmful interference resulting from Monroe's power flux density exceeding the values in Tables 29 or 30 at or beyond the U.S./Canada border.³⁴

V. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 337(c), the request for waiver filed by the County of Monroe, New York on September 10, 2004, to use frequencies 939.6500 and 900.6500 MHz, for public safety services as requested in the captioned application **IS GRANTED**.

12. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 337(c), FCC File No. 0001897038 **SHALL BE PROCESSED** consistent with this *Order* and the Commission's rules.

13. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0131, 0331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

³⁴ See 47 C.F.R. § 90.619(d)(6).